IN THE

Supreme Court of the United States.

No. OCTOBER TERM, 1901.

CHRISTIAN SCHWARTZ, a citizen of the State of West Virginia, ANTHONY KOTERBA, DAVID STROHAKER and ALLEN SHALE, citizens of the State of Ohio, and G. L. SHALE, a citizen of South Dakota

vs.

JOHN S. DUSS, GOTTLIEB REITHMUELLER, FRANZ GILLMAN, CONRAD HERMANSDOERFER, EDWARD KELLERMAN, JOHANNA HERMANSDOERFER, SUSIE C. DUSS, KAROLINE MOLT, KATRINA NAGEL, ELIZABETH BECK, MARIA DIEM, BARBARA BOECH, FREDERICKA MUNZ, DOROTHEA HOEHR, REGINA LAUTENSCHLAGER, CHRISTIAN RALL, HENRY HICE and JOHN REEVES, citizens of the State of Pennsylvania, and THE UNION COMPANY, a corporation citizen of the State of Pennsylvania.

Brief of Argument for Petitioners.

A full history of the Harmony Society as it was originally constituted, and as it has always remained until its dissolution, is given in the printed argument for plaintiffs before the Circuit Court of Appeals. A copy of that argument is filed with the petition, and we beg to refer the attention of the Court to it should the present brief fail to give needed information.

I.

Statement.

The Harmony Society, as it in later years is designated, was known as "GEORGE RAPP AND HIS ASSOCIATES" from the year 1805—when the first articles so far as is known, were executed—until the year 1836.

Who George Rapp's associates were is undisclosed by any of the records of the Society. It is almost a certainty, however, that he had no "associates," for from the beginning until his death in 1847, he was the absolute and exclusive ruler, patriarch and lawgiver; and had the absolute and exclusive control of all its wealth, and of its internal and external affairs.

The scheme of Society conceived by George Rapp was an association with "community of goods as adopted in the days of the Apostles," with the government of the Patriarchal age, as cardinal principles. New members were to be admitted by "adoption." All additions to the Society have been by "adoption." All the power vested in and remained in the Patriarch; all the subjection and no power, voice or vote constituted the portion of "adopted" members.

Every member upon adoption executed conveyance of his real estate, and surrendered possession of his personal wealth to "George Rapp and his associates" until 1836, and afterwards to the Harmony Society, for the use and benefit of the community; and every "adopted" member entered into written articles of adoption.

Each "adopted" member thereby bound himself in writing to give ready and cheerful obedience to all the laws and regulations as well as to the commands of superintendants, and to labor with his hands and those of his family.

In consideration whereof, the contracting member was formally adopted as a member of the community; and was to receive instruction in church and school and his lodging, meat, drink, clothing, &c., and medicines, so long as he remained in membership.

Until the execution of the articles of 1836, the "adopted" members, upon withdrawal from the community. were entitled to a return of tbe value of their lands, money, goods and chattels, severally contributed to the Society, without interest. in three annual gales, the profits of their labor were, however, unrecoverable.

The religious beliefs taught were the nearness of the millenium; the second advent of Christ; the duality of sex in man before the fall, and the ultimate restoration to man of that duality.

The doctrine of celibacy, and the non-sexual intercourse of married members, was also taught and strictly enforced. It was a necessary policy for the preservation of the doctrine of community of goods; otherwise the property of the community would be exposed to depletion by deaths of members, and the operation of laws of inheritance.

The community was unincorporated, and had for its object no charitable, religious, scientific or literary purpose in the legal sense.

The several articles of adoption until that of 1836, bear date as follows, viz: February 15, 1805, ("Exhibit A" Record Vol. 1, p: 47); January 20, 1821, ("Exhibit B" *Id.*, p. 50); March 9th, 1827, ("Exhibit C" *Id.*, p. 52.)

As the articles preceding those of 1827, are substantially in accord with those of the latter year, and as the latter contains a fuller recitation of purposes than the preceding ones, we print the articles of 1827 in full (Record Vol. 1, Exhibit "C" p. 52).

Articles of 1827.

"Whereas, By the favor of Divine Providence, an associa-
"tion, or community, has been formed by George Rapp and
"many others, upon the basis of Christian Fellowship, the prin-
"ciples of which being faithfully derived from the sacred scrip-

"tures, include the government of the patriarchal age, united "to the community of property adopted in the days of the "apostles, and wherein the single object sought is to approxi- "mate. so far as human imperfection may allow, to the fulfill- "ment of the will of God, by the exercise of those affections, "and the practice of those virtues which are essential to the "happiness of man in time and throughout eternity:

"And Whereas, It is necessary to the good order and "well being of said association that the condition of membership "should be clearly understood, and that the rights, and privi- "leges, and duties of every innividual therein should be so "defined as to prevent mistake or disappointment on the one "hand, and contention or disagreement on the other.

"Therefore. Be it known to all whom it may concern: "That we, the undersigned citizens of Beaver County, in the "Commonwealth of Pennsylvania, do severally and distinctly, "each for himself, covenant, grant, and agree to, and with the "said George Rapp, and his associates, as follows, to wit:

"Article 1. We the undersigned, for ourselves, our heirs, "executors and administrators, do hereby give, grant, and for- "ever convey, to the said George Rapp and his associates, and "their heirs and assigns, all our property, real, personal and "mixed, whether it be lands and tenments, goods and chattels, "money or debts due us, jointly or severally, in possession, or "in remainder, or in revision, or in expectancy, whatsoever or "wheresoever, without evasion or qualification, or reserve, as a "free gift or donation, for the benefit and use of the said asso- "tion or community; and we do hereby bind ourselves, our "heirs, executors and administrators, to all such other acts "as may be necessary to vest a perfect title to the same in the "said association, and to place the said property at the full "disposal of the Superintendents of the said community with- "out delay.

"Article 2. We do further covenant and agree to and with "the said George Rapp, and his associates, that we will sev- "erally submit faithfully to the laws and regulations of the "said community, and will at all times manifest a cheerful and "ready obedience toward those who are or may be appointed as "Superintendents thereof, holding ourselves bound to promote "the interests and welfare of the said community, not only by

"the labor of our own hands, but also that of our children, or "families who now are or hereafter may be under our control.

"Article 3. If, contrary to our expectations, it should so "happen that we could not render the faithful obedience afore- "said, and should be induced, from that or any other cause to "withdraw from the said association, then and in such case, we "do expressly covenant and agree to and with the said George "Rapp, and his associates, that we will never claim or demand, "either for ourselves, our children, or for any one belonging to "us directly or indirectly, any compensation, wages or reward "whatever, for our or their labor or services rendered to the "said community, or to any member thereof; but whatever we "or our families jointly or severally shall or may do, all shall be "held and considered as a voluntary service for our brethren.

"Article 4. In consideration of the premises, the said "George Rapp, and his associates, do by these presents, adopt "the undersigned, jointly and severally, as members of the "said community, whereby each of them obtains the privilege "of being present at every religious meeting, and of receiving, "not only for themselves, but also for their children and fam- "ilies, all such instructions in church and school as may be rea- "sonably required, both for their temporal good and for their "eternal felicity.

"Article 5. The said George Rapp, and his associates, "further agree to supply the undersigned severally with all "the necessaries of life, as clothing, meat, drink, lodging, &c., "for themselves and their familes; and this provision is not "only limited to their days of health and strength, but when "any of them shall become sick, infirm, or otherwise unfit for "labor, together with such medicine, care and attendance and "consolation as their situation may reasonably demand. And "if at any time after they have become members of the associ- "ation, the father or mother of a family should die or be other- "wise separated from the community, and shall leave their "family behind, such family shall not be left orphans or desti- "tute, but shall partake of the same rights or maintenance as "before, so long as they remain in the association, as well in "sickness as in health, and to such extent as their circum- "stances may require.

"Article 6. And if it should happen as above mentioned, "that any of the undersigned should violate his or her agree- "ment, and would not or could not submit to the laws and regu- "lations of the church or community, and for that or any other "reason, should withdraw from the association, then the said "George Rapp, and his associates, agree to refund to him or "them the value of all such property, without interest, as he or "they may have brought into the community in compliance "with the first article of this agreement, and the said value to "be refunded in one, two or three annual installments, as the "said George Rapp and his associates shall determine. And if "the person or persons so withdrawing themselves were poor, "and brought nothing into the community, yet if they depart "openly and regularly, shall receive a donation in money, ac- "cording to the length of their stay, and to their conduct, and "to such an amount as their necessities may require, in the "judgment of the superintendents of the association.

"In witness whereof and in testimony that the undersigned "have become members of the said community, upon the con- "ditions aforesaid, they have hereunto severally and each for "himself set their hands and seals, on the 9th day of March, in the year, 1827."

From the beginning until the year of his death—1834—all titles to real and personal estates were held in fee and absolutely by Frederick Rapp. No Trust was declared by him until the 20th of July, 1825; on that date he declared under his hand and seal:

"that all property, real, personal and mixed, which then was, "or hereafter might be in his possesion or enjoyment, or the "title to which he then held or might hereafter hold was and "should be considered the property of the Society, in which "he, the said Frederick, had no absolute interest whatever."

The subsequent documentary history of the community (referring hereafter to the articles of 1836 as the foundation of petitioners' right of action) is briefly as follows, viz:

Articles of July 5th, 1834.

Printed in Record, vol. 1, pp. 142 *et seq.*

Frederick Rapp, the Trustee, died in 1834. These articles nominated and appointed George Rapp, as his successor in the Trust. The powers conferred on George Rapp, are as follows, viz:

"1. To ask for, demand and receive from each and every "bank or other incorporated company, partnership, or individ- "ual person or persons, the amount which may be due there- "from, in the way of principal, interest or dividend, to the "said Harmonie Society, or to Fred'k Rapp, whether the same "be evidenced by judgment, mortgage, bond, certificate of "stock, note, bill of exchange, deposit of money, book account, "verbal promise, sale or barter, loan of money, or a rise in any "other manner whatsoever; the check, order, receipt, acquit- "tance or release of the said George Rapp to be as effectual as "if executed by all and each of us, or as if it had been execu- "ted by the said Frederick Rapp in his life time.

"2. To execute and receive all deeds and conveyances, in "fee simple or otherwise, on behalf of the society, whether "the title thereto stand in the name of the society, or of Fred- "erick Rapp, or of George Rapp and associates. The act of "the said George Rapp relative thereto to be as valid and suf- "ficient as if executed by us or by the said Frederick Rapp in "his life time.

"3. To carry on, by himself or through the agents whom "he is hereinafter authorized to appoint, all the dealings and "traffic of said society of every description.

"4. To constitute and appoint an agent or agents under "him as he may deem advisable, imparting to such substitute "or substitutes, should he think fit, the whole or any portion

"of the authority hereby conferred on himself. He may also, "at his pleasure, revoke such instrument of substitution when- "ever he may think such revocation called for by the interests "of the society.

"5. It is distinctly understood that in accepting and "acting under this power the said George Rapp disclaims all "personal interest, other than that of a member of said society, "in the present resources or future earnings of the society, in "conformity with the principles and terms upon which the "Harmonie Society was originally founded, as fully and effec- "tually as was done by the late Frederick Rapp in the instru- "ment already averted to, dated 20th July, 1825, the terms of "which instrument the said George Rapp hereby adopts for "himself, and repeats in every particular."

In pursuance of this power George Rapp appointed R. L. Baker and Jacob Henrici to act in his stead, and imposed upon them the Trusts which had been imposed upon him.

Articles of October 31, 1836.

These articles are printed as "Exhibit D," Record Vol. 1, pp. 57, et seq.

The articles of 1827, which we have already quoted in full, are ratified and confirmed with the exception of Article 6th of that document, relating to restoration of specific contributions of property to withdrawing members. The 6th article is annulled, for the alleged reason that it manifestly departed from the great principle of community of goods, and tended to foster a feeling of inequality

As these articles have a very important bearing upon plaintiffs' rights, we will later on in this brief more fully refer to them.

Articles of August 14, 1847.

Printed as "Exhibit E," (Record Vol. 1 pp. 61, et seq.)

George Rapp, the Patriarch had died in that year. These articles vested all the powers of the Patriarchy in a Board of Elders, consisting of nine members, therein named, and in a Board of Trustees, composed of two members of the Board, therein named.

The Board of Elders were vested with the exclusive control of internal affairs, and the Board of Trustees, succeeding to the Trusts designated in the appointment of George Rapp, had exclusive control of external affairs. The Board of Elders was self perpetuating, with power to fill all vacancies in either Board.

The lay members had no voice or vote in the election or nomination of these Boards, no power to compel accounts. Their rights remained limited as by the prior articles, to mere subsistence; and their duties of labor continued. The articles of 1836 and of 1827 are re-affirmed.

Articles of April 30, 1890.

These are printed on pages 67 *et seq*, Record Vol. 1 as "Exhibit F."

These articles ratify and confirm the articles of 1847; recites the death of one of the Trustees and ratifies and confirms the appointment of Ernest Woelfel as co-trustee in succession to Jonathan Lenz, deceased; and recognizes as the existing Board of Trustees, Jacob Henrici and Ernest Woelfel.

Articles of December 22, 1892.

These are printed in the Record Vol. 1, p. 74, as "Exhibit G." They confirm the articles of 1847 and of 1890; name the existing members (then thirty-five in number) and declared the names

of the Board of Elders to be, viz: Jacob Henrici, John S. Duss, Johannes Scheid, Gotfried Lauppe, Moritz J. Fredericks, Jacob Niclaus, Conrad Hermansdoerfer, Hugo Miller and Gotlieb Reuxhmiller; and of the Board of Trustees—Jacob Henrici and John S. Duss. All of these, except Duss, are either dead, or their interests in the property have been purchased by Duss.

The object of these articles was to enlarge the powers of the Trustees to enable them to borrow money on mortgage. Father Henrici at this date was ninety years of age, and had for months been in a very feeble and sickly condition. Two days after the date of these articles he died.

Articles of April 11, 1894.

These are printed as "Exhibit H," Record, Vol. 1, pp. 112, *et seq.* They purport to be signed by eighteen persons; of those nine only, including Duss and his wife, are living—of the remainder all are women but one.

The object of these articles was to authorize the Trustees to sell all the lands and tenements of the society in Allegheny County and Beaver County, Pennsylvania, to the Union Company, for the consideration of $397,500, payable in its capital stock shares.

In none of the articles is a termination of the life of the society contemplated or provided for. While the property of the society was always bound in the hands of the Trustees by acknowledged trusts for the use and benefit of the society, the title deeds were in fee simple in the names of the Trustees, without expression of the Trusts.

II.

Membership.

The progress of the community in its adopted membership was for many years successful. The adopted members signing the articles of 1805, numbered 750 persons; those of 1827 bore the signatures of 666 persons (Vol. 1, p, 133); those of 1836 bore the signatures of 424 (Vol. 1, p. 139).

From this date the membership began to decline. The articles of 1847 have only 288 signatures (Id. 146); those of 1890. only 45 members (Id. 204); those of 1892, thirty-three signatures (Id. 213); and those of 1894 only eighteen signatures (Id. p. 222).

Of these eighteen all but nine are dead or have been bought out; two of the nine are John S. Duss and his wife. All the remaining ones are old peasant women, except one, Franz Gilman, and he is old, feeble and weak of intellect.

The Trust Properties.

The progress of the wealth of the community is more marked. In 1805, it owned 7,000 acres of land in Butler County, Pennsylvania; in 1815, it sold those lands, and purchased 10,000 acres of land in Posey County, Indiana; in 1825, it disposed of most of their lands there, and bought 3,000 acres of land in Beaver County, Pennsylvania, and established the town of Harmony. By its system of unpaid labor it developed many industries, and became possessed reputedly of great wealth.

Through bad management many losses were incurred; but the Beaver County lands, only 18 miles below Pittsburgh, closely surrounded by populous suburbs, with a frontage on the Ohio river of three miles, with a substantial town of several hundred brick houses, churches, mills, vineyards and productive oil and gas developments, are now worth four millions of dollars.

The following conclusions necessarily follow from the consideration of the articles cited.

A. All the real estate, monies, goods, chattels, and accretions are subjected to Trusts for the use and benefit of the community, and such trusts are express trusts:

B. All of the property was held in the names of the individuals who from time to time were acting as Trustees, but without designation of character as Trustees, or expression of Trust. The deeds were in fee simple, the possession of the other properties absolute.

C. The constitutions and agreements contemplated no end to the life of the society, and made no provision for such event; and the Trusts provided no remainder over upon the death or dissolution of the society from any cause, or upon the failure of the Trusts.

D. The Trusts were created for the Society AS A SOCIETY, and not for members as such; and did not create a joint tenancy with right of survivorship.

E. The community is unincorporated, and was organized for no charitable, religious, literary or scientific purpose in the legal sense.

F. The purposes and principles, and mode of government prescribed and practiced are against the policy of the law, viz:

In the establishment of a mode of government not recognized by the laws of Pennsylvania; in a system to absorb into the society all the individual wealth of members and profits of their unpaid labor, as well as all accretions for an unlimited period of time; in establishing a dominant and governing class in whom vests the use, enjoyment and disbursement of the wealth, and the social and civil control of lay members by undefined laws and regulations; and a subject class composed of the ordinary members, whose sole interest is a charge on the property of the society for lodging, food, clothing, drink, medicines, etc., whose duty was to labor without compensation, and who possess no voice or vote in the selection of the governing body, or in the formation of laws and regulations, or enforcement of discipline; and with no right to demand an accounting for the property, use and application of the trust properties:

The doctrine of community of goods; the form of patriarchal government, and the establishment and enforcement of the doctrine of celibacy and the non-sexual intercourse of married members.

The petitioners contended that in these circumstances the trusts were void, and the property covered by the trusts necessarily reverted to the donors of the trust properties, if living, and to the heirs and representatives of those who died members of the Society.

The Circuit Court of Appeals merely adopted the opinion of the lower Court in its opinion, without discussion of these questions. The opinion of Judge Acheson, of the lower Court, adopted the findings of the Master without discussion; and the Master found as matter of law,

that the Society did not in its purposes and principles offend against public policy; that this unincorporated Society was capable of holding property directly or indirectly through Trustees; that the rule against perpetuities was not violated, and that the trusts were valid trusts.

As respects the Master's findings upon the question of the rule against perpetuities: he bases his opinion upon the fact that as the titles to the trust properties were absolute in the trustees, there was a power of sale in the trustees, and that therefore there was no perpetuity. He, therefore, overlooked the vital fact that the proceeds of such sales are to be held upon the same trusts as were the properties sold. The power of sale given to the trustees was not given to *terminate* the trust, but to *continue* it. It is not a power of sale but the period of distribution which decides whether a perpetuity has been created. The suspension of the power to alienate the subject of a trust is not relieved against by a power to

exchange for other property to be held on the same trust, or to sell it and re-invest the proceeds to be held on the same trust.

We refer to the following clause of the article of August 12th, 1847 (Record Vol. 1, p. 149).

The third clause of article 5th provides:

> "The said trustees shall have power jointly to purchase "real estate in their own names, and also in their joint names "to grant, bargain, sell or convey all or any of the lands or "tenements now or hereafter owned by or belonging to the "said society, and for this purpose to execute deeds of con- "veyance in fee simple or otherwise in their joint names, *but "the proceeds of all such sales shall be held in trust for the "society.*"

Article 6th of the same agreement expressly declares:

> "That all the property, real, personal and mixed, which "*now or hereafter* shall be held or acquired shall be "deemed the common property of said Society * * * * "according to the articles of association re-established and "continued and according to the present agreement."

The authorities bearing upon the question of the rule against perpetuities appear in our printed argument filed in the Circuit Court of Appeals on p. 95 to 111, inclusive.

It is respectfully submitted that the Master erred, and that the petitioners have not had the advantage of full consideration of these questions by either the Circuit Court or by the Circuit Court of Appeals.

III.

The petitioners also asserted that if, notwithstanding these contentions, the trusts were valid for the Society as a Society, yet the life of the Society had terminated and therefore the trust property reverted to the donors and their heirs and representatives.

The Master *further* found that the society had not by *mutual consent* been dissolved, and therefore continued to be a society. His findings in this respect are sustained by the lower Court by a general expression of affirmance, without review. Judge Acheson further said as follows, viz:

> **"It is not necessary nor would it be proper for the Court "to express any opinion as to what would be the legal status "and the ultimate disposition of the property of the Har- "mony Society were its existence terminated by the death of "all its members, or were a dissolution otherwise effected. "No such questions are before us--we are not dealing with "the assets of a defunct and dissolved association."**

The Circuit Court of Appeals adopts the opinion of Judge Acheson as its own in this respect.

It therefore follows, from the decisions, that trusts exist, and exist for the benefit and use of the community as a society, excluding individual rights of members and rights of survivorship; that the circumstances of undisputed fact do not constitute a dissolution of the society in law, and that such dissolution could be the result only of the consent of the members themselves.

The terms of the constitutions of the society gave to members no power as members to formally dissolve the society.

If the contentions of the plaintiffs be correct, the underlying question of the ultimate destination of the property remains undisposed of.

Acts of Dissolution.

The undisputed facts bearing upon the dissolution of the Society and the failure of the Trusts, date principally from January, 1890.

In the month of January three members of the Board of Elders died, and among them was one of the members of the Board of Trustees—Jonathan Lenz. The Board of Elders, in accordance with the power given them by the articles of 1847, filled the vacancies by the election of John S. Duss and two others, Nicklaus and Fishern as Elders. The three men were admitted to membership and to the Eldership on the same day—an unprecedented occurrence.

Duss was a young man with no pecuniary means; had been for years drifting through the West in desultory engagements, and shortly prior to the date of which we are speaking, was employed as a teacher for the Society. Mr. Henrici, the senior Trustee, was then eighty-eight years of age, feeble in body and with little remaining vigor of mind.

On February 13th, 1890, sixteen new members were admitted, among them the wife of John S. Duss. About July 1, 1890, the new Junior Trustee died—Ernest Woelfel by name, and Duss was chosen Junior Trustee in his stead by the Board of Elders.

On December 25, 1892, Father Henrici, the Senior Trustee, died, and Duss was chosen his successor by the Board of Elders—the Board of Trustees then consisting of Duss and Samuel Siber, the town constable.

Duss at that time was about thirty years of age, with a vigorous constitution, and with a splendid expectation of life.

The members of the Society were about equally divided between old and decrepit people and those in vigorous life.

Duss admitted but one new member from the time of his accession to the chief place—one Leonard Hoehr; this was on March 14, 1893.

Between March 14, 1893, and June, 1893, Duss entered into negotiations with the vigorous members, and bought seventeen of them out, (Record 2, pp. 951 to 956) He paid most of them $5,000 apiece; others more, one or two less, and one as low as $2,500. Among these is Leonard Hoehr, who had joined the Society two or three months before. The new members admitted before the death of Mr. Henrici in February, 1890, and before Duss had control, composed the great majority of those whom Duss bought out in 1893. The list of purchased members included the Junior Trustee, and the head of every department of the business of the Society.

These transactions were really acts of liquidation, and the ascertainment and payment of the *pro rata* share of each of the selling members in the property of the Society were acts of partition, as reference to the deeds and bills of sale will manifest.

These instruments recite *inter alia* that the selling member knew that the Society was the owner of stocks and bonds of the nominal value of several hundred thousand dollars, and also of judgments, mortgages and unsold real estate and buildings, of the nominal value of several hundred thousand dollars:

> "Also that while it may be that said Society may have
> " * * several hundred thousand dollars worth of property
> "after paying all its debts, we are entirely satisfied to *accept as*
> "*our share therein* the sum of * * * dollars.

In addition to this express *sale* of *shares*, the average of $5.000 each to the withdrawing members, was very nearly a full proportion of the Society's property, *as then valued by Duss*, to which each would be entitled were all the property so valued divided between all the members.

These purchases were certainly acts of winding up the Society, liquidating its affairs, and making partition of its effects. Each withdrawing member took his share in money. Further process of liquidation by purchase of the shares of remaining members was stopped by notice by petitioners of the proposed filing of this Bill.

Otherwise this procedure was a clear breach of trust; the members as such were entitled to no part of the funds of the Society, and the Trustees had no power to make such payments; under the terms of the Trust the Trust was created for the Society *as a Society*.

As was said by the late Justice Strong, in the of *Kain vs. Gibboney*, 101 U, S. 362, in construing a bequest which was claimed by the Sisters of St. Joseph:

> "That is an unincorporated association and it is the asso-"sociation *as such*, and not the individual members who com-"posed it * * which is declared to be the beneficiary " * * * . Its members must be constantly changing and "it must always be uncertain who may be its members at any "given time. No member can assert claim or individual bene-"fit from the bequest, or assert that she is a *cestui que trust*.

Depletion by Death.

Death came most efficiently to the aid of Mr. Duss in his expectation of survivorship. Eighteen deaths have removed as many outstanding lives. When this Bill was filed there were only fifteen members, including Duss and his wife. To-day there are only seven

persons exclusive of Duss and wife—nine in all. There are but two men left, Duss and Gillman. Gillman is seventy years of age and is an imbecile. The Board of Elders is composed of these two men and seven women. The Board of Trustees—to consist of two Elders—no longer exists. Duss is himself the sole Trustee. There remain no members to be governed.

The imperative requirements of the articles of 1847 are that the Board of Elders *shall* consist of nine members, and the Board of Trustees *shall* consist of two of the Elders. Every surviving member is required for the Eldership, and there remain no members to constitute a Society or to be governed. The whole scheme of a Society or a community has fallen by pre-arrangement.

As for the doctrine of celibacy Duss and his wife and children are living as a family in the Great House.

As for community of goods, it has been entirely abandoned. Duss as sole trustee is in absolute enjoyment as his own property of this great fortune, subject only to the insignificant expense of maintaining seven old and ordinary peasant women, for whose death Duss may patiently wait, or whose prior exclusion he can accomplish by purchase for trifling payments.

The Union Company

The last act, and to this we ask particular attention, consists of the *written consent of every member living at the time*, Elders, Trustees and lay members, to the entire and complete obliteration of the Society, of the Board of Elders and of the Board of Trustees, and the delegation, including a transfer of all its property, to a capitalistic corporation of Pennsylvania, (organized for profit for the purpose of buying and selling real estate) of all the powers and duties of the Board of Trustees.

The Union Company was incorporated in April, 1894, with a share capital of $400,000. The real object of the incorporation was to take over to itself all the trust real estate of the Society.

On the 11th of April, 1894, articles were executed, signed by every member ("Exhibit H," Record, Vol. 1, p. 112) in words as follows, viz:

"Whereas, The trustees of said Society are advised that a "suit is about to be brought against it in the name and on be- "half of a large number of persons who claim to be lawful "heirs of certain deceased members of said Society, the ob- "ject of said suit being to compel the Society to pay large sums "of money to said persons as portions of the Society's property "claimed to be due to said persons as heirs of such deceased "members, which claims we regard as totally unfounded; and

"Whereas, It may become necessary for said trustees, in "order that they may obtain money wherewith to pay the debts "of the Society, and otherwise properly protect its interests, "either to borrow money and give security for the payment "thereof, or sell the lands of the Society, and thereby obtain "cash for the payment of said indebtedness; and

"Whereas, The trustees are advised by counsel that the "lands of the Society can better be managed, as well as made "more available for the purposes of collateral security in case "loans are to be effected, and in case of sale a more satisfactory "title can be given to the purchaser, if said lands should be "first conveyed to an incorporated company, *to be thereafter "managed, sold and disposed of, by and in the name of said "incorporated company; and also avoiding thereby inconveni- "ence and trouble that may arise from time to time by change "of trustees, by death or otherwise.*

"Therefore, We, the members of said Harmony Society, "do each hereby express our consent with and request that "John S. Duss and Gottlieb Riethmueller, the present Trus- "tees of said Society, shall forthwith sell, transfer and convey "to the Union Company, a corporation duly created and or- "ganized under the laws of the State of Pennsylvania, *all the "lands, tenements and hereditaments, situated in Allegheny*

and Beaver Counties, Pennsylvania, now owned and held by "said Trustees for the benefit of the said Society to the end "that all said lands, tenements and hereditaments may be "owned, held and managed by said incorporated company and "be sold and otherwise disposed of from time to time in pur- "suance of proper corporate action as may be determined by "the directors and officers of said incorporated company.

"The capital stock of said incorporated company, however, "to be owned and held by the said Trustees for the benefit of "the Society, in accordance with and on the terms and condi- "tions of the articles of association of said Society and the "ratifications and modifications thereof, as the same now ex- "ists, to the extent of three hundred and ninety-seven thousand "five hundred ($397,500) dollars, out of a total capital of four "hundred thousand ($400,000) dollars."

The Society no longer owns a foot of land, nor a house to to shelter its members. The Trustees have no property to enable them to comply with the contract obligation to clothe, feed and lodge its members. The corpus of the the Trust properties, which, under the articles of 1847, were to always remain in the ownership and control of the Trustees, subject to the Trusts, and which was always to be exclusively managed by the Board of Trustees, has passed clear and freed from the Trusts from this communistic Society into the hands of a capitalistic corporation, to be subjected to the debts of the corporation, to the payment of corporate taxes, and to the vicissitudes of a business having not the remotest relation to the objects and purposes of the Harmony Society.

An examination of the powers of the Trustees will show conclusively they had no power in the execution of their Trust to exchange all their lands for stock, and to constitute the Union Company as their substitute. We quote from the Articles of 1847:

"Article 5th. The said Trustees shall jointly and sever- "ally have and exercise the powers following, to-wit: 1st.

"In their own names or that of either of them, or otherwise, to "purchase and sell, deal, barter, exchange and traffic, make all "contracts and bargains in the prosecution of the business, to "invest the funds in stocks and other securities, and make "transfers and assignments, to collect debts, receive and pay "out moneys, settle claims, compromise disputes, institute legal "proceedings, appoint and dismiss agents, clerks and attorneys "in fact, and at law, and generally to transact all the external "business affairs of the Society. 2nd. To make donations to "seceding and excluded members and to the representatives "of those who are deceased and for such benevolent and char- "itable purposes as they may deem prudent and fit. 3rd. The "said Trustees shall have power jointly to purchase real estate "in their own names and also in their joint names to grant, "bargain, sell and convey all or any of the lands and tenements "now or hereafter owned by or belonging to the said Society, "and for this purpose to execute deeds of conveyance in fee "simple or otherwise in their joint names, but the proceeds of "all such sales shall be held in trust for the Society. 4th. For "the purpose of providing effectual and convenient remedy in "law for all injuries to the property of the said Society, real "and personal, by trespass, ouster, detention, conversion or "otherwise. The said Trustees are hereby invested with the "rights of possession, entry and action in their own names as "fully and to all intents and purposes, as do and may exist in "the said Society, and to effectuate this object more completely "and in consideration thereof, we grant and transfer to the "said Trustees all such title and interest in the said property "as shall be necessary therefor. The proceeds of all suits to be brought shall be in trust for the Society. 5th. The pow- "ers hereby vested in the said Trustees shall extend in and "embrace all the property of said Society, real, personal or "mixed, whether standing or held in the name of the late "Frederick Rapp, the said George Rapp, or in any other name "or form whatsoever.

"Article 6th. It is hereby distinctly and absolutely de- "clared and provided that all the property, real, personal and "mixed, which now or hereafter shall be held or acquired by "any trustee or trustees or person under them, is and shall be "deemed the common property of said society, and each trus-

"tee now or hereafter appointed, hereby disclaims all personal "interest in the present resources and future earnings of the "society, other than that of a member thereof, according to "the articles of association hereby re-established and contin- "ued, and according to the present agreement."

The Board of Trustees can no longer have "the exclusive management of the external business of the society."

The Board of Elders cannot exercise the powers confided to them. In the case of a vacancy in that board "occasioned by death, resignation or removal from office," they have no other member to fill the vacancy.

The Board of Directors of the Union Company, with one exception, is composed of persons not members of the Society. The Company cannot under its charter, treat its property as still subject to the communistic principles of the Economy Society, its control by the Board of Elders, but must hold and dispose of it for the profit of the Company under the laws of Pennsylvania.

In brief the society is a shell; its name is retained as a mask.

We submit that error was committed in disregarding these facts as acts of dissolution

IV.
Basis of Plaintiff's Title.

Acting upon the belief that the principles and purposes of the society had been abandoned, that the society had ceased to exist and that the Trusts had failed, the petitioners, recognizing the fact that the property of the society had been conveyed away, and that there was imminent danger it would be transferred, sold or disposed of to the prejudice of their claims by the Union Company, within a few days after the transfer had been made filed their bill for relief in the premises.

Their right to so sue is denied by the Master, and his finding is sustained by the Circuit Court and by the Circuit Court of Appeals. The grounds for this finding disclose that petitioners' real title for relief was misunderstood, and not considered by the Master or by either of the tribunals.

The plaintiffs claim, as the admitted heirs and legal representatives of ancestors who died members of the Society since the year 1836. There is no denial of their representative capacity.

They claim that these ancestors, with all subsequent members of the Society who signed the articles of 1836, or adopted them by signing the subsequent confirmatory articles of 1847, were the donors in equal proportions of all the trust properties held for the use and benefit of the Harmony Society.

That upon the failure of those trusts there being no remainder over, the corpus of the trust properties reverted by way of resulting Trust to those donors, and to the heirs and legal representatives of those of them who had died members of the Society.

Hence, they have sued *not* the Harmony Society, because it no longer exists, but all the remaining members of it, including the Trustees and the Union Company, who have among them this property, which had reverted as aforesaid.

The plaintiffs do *not* sue a living and going Society to receive specific contributions of their respective ancestors out of an existing and valid trust. The Master made his ruling against us upon the hypothesis that we do so sue.

V.

The petitioners' rights as reversioners are based upon the articles of 1836.

It will be remembered that under all the articles preceding those of 1836, every adopted member, upon withdrawal from membership, was entitled to the restoration to him of all his contributions to the community of lands, monies, goods and chattels without interest, and payable to him in one, two and three years from the time of his withdrawal.

This vested in every contributing member a property right or interest.

The articles of October 31, 1896, ("Exhibit D," Vol. 1, pp. 57, *et seq.*) were entered into by all the owners of this right of restoration, held by each in unequal proportions, and they contracted with each other and with all subsequent signatories to abandon that right, and to transfer to all members equally this right of restoration, and covenanted that thenceforth all property,

> "real, personal and mixed in law and eqity, and howsoever "contributed or acquired, shall be deemed now and forever "*joint and indivisible stock*. Each individual is to be consid- "ered as having parted with all his former contributions, "whether in land, goods, money or labor; and the same rule "shall apply to all future contributions, whatever they may "be."

Subsequent provisions of these articles declared the trusts to which this "joint and indivisible" stock was subjected. The result necessarily was to vest in all the members an equal share of the corpus of the Trust properties, so that if the Society had been dissolved the next day, all the members as the equal

donors of the trust property would have divided the entire estate between them as reversioners by way of resulting Trust. That being the case it matters not when the failure of the Trusts occur; when it does occur, the trust properties revert by way of resulting trust to all who had been the equal owners of this joint and indivisible stock.

There is no place else for the property to go in such event.

The trusts are not created for the benefit of *the members as members, but for the society as a society.* Hence the members as members cannot take. There is no remainder over provided for by any of the articles in the event of the dissolution of the society from any cause. There is no provision for a joint tenancy with a right of survivorship or for a system of tontine.

To exclude the plaintiffs is equivalent to asserting that the scheme of this society was to create an aggregation of great wealth on communistic basis, *for the final benefit of the last survivor*, thus inviting effort to destroy in favor of the last survivor the very community it was the intent to maintain and make prosperous.

There can be no escheat because the association is not incorporated.

The Trustees cannot retain it, because they have declared that the property held by them they hold as Trustees.

In this construction of the article of 1836 for which we contend, we are supported by the decision of the lower Court in the case of *Nachtrieb vs. Baker et al.*, Trustees of the Harmony Society, in an opinion of Judge Irwin, supported by the late Justice Grier of this Court sitting in that Circuit. The case came to this Court and is reported in 19 Howard (U. S.) 126. The decision

was reversed upon the grounds, 1st. That Nachtrieb had released the Society, and 2nd. The bill had not made the averments necessary to justify an inquiry into the questions of hardship and violation of public policy. No dissent from the conclusions of the Court below except in these respects is noted.

Nachtrieb claimed that he had been unlawfully and unjustly excluded from membership, and sought to recover his share of the property of the society.

Judge Irwin finding that Nachtrieb had been unjustly excluded, proceeds to say:

> " * * "it is material to know the amount of interest "which by several agreements was the complainant's propor- "tion in the property of the society at the time he was re- "moved. *It was held by the superintendent in trust for the "common use and benefit of all its members as joint and indi- "visible stock. The complainant's interest was therefore an "equal undivided interest of all that property to be determined "after the settlement of all just claims against the society by "the number of its members.*"

A Master was appointed to ascertain the values of the society's property over and above its debts, and the actual amount coming to Nachtrieb. This report and account of the Master was confirmed by Justice Grier, who entered the final decree.

The opinion of Justice Grier in entering the final decree is reported in 3 Wallace, Jr., p. 81.

In this opinion Justice Grier clearly held that when the contract between the members of the association and the association itself *was broken*, that then the member was entitled under the articles of 1836 *to an equal share of the property of the association, as*

one of the owners of the joint and indivisible stock created by the articles of 1836; that although by the contract and agreement referred to of the several members of the association, each has an equal right and interest in their common property; yet as the association had unlawfully excluded the plaintiff, Nachtrieb, the contract between him and the association *was broken* and he was entitled to an equal share of the property, namely, one three hundred and twenty-first part, there being then, including Nachtrieb, three hundred and twenty-one members.

It therefore follows, viz: that *each of* the signatories of the articles of 1836 had an equal share of all the property, and could receive it when the contract *was broken*, upon which the society received it. And it is submitted that the dissolution of the society for which the property was given and the trust was established, constituted a *breaking* of the contract.

The opinion of Judge Irwin certified by the Clerk of the Court, is contained in the "Supplemental Paper Book" of the defendants, a copy of which is filed with this brief.

The Master says that we cannot maintain this Bill, because by the articles of 1836 it was agreed that:

> "Should any individual withdraw from the society, or de-
> "part this life, neither he in the one case, nor his representa-
> "tives in the other shall be *entitled to demand* an account *of*
> "*said contributions*, whether in land, goods, money or labor, or
> "claim anything from the society as matter of right."

As we are not seeking from the *society*, as a living *society* an accounting of the specific contributions of our ancesters, or in point of fact claiming anything from the *society* at all,—and are only claiming because there is no society and because the trusts have therefore failed, it is difficult to see the application which the Master makes.

In the Nachtrieb case this clause was held not to be applicable when the contract in which it appears is *broken*. How much the

more when the whole contract is defeated by the death of the society it was the purpose of the contract to maintain.

Prior Cases.

Although the affairs of the Harmony Society have several times been before this Court, and before the Supreme Court of Pennsylvania, a full consideration of the purposes and principles and mode of government of that society, though recognized as proper subjects of judicial investigation, was defeated by reason of defect in pleading, or the character of the suit, or a defect in the status of the plaintiffs, or some collateral matter.

The case at bar is the only case within our knowledge which involves a recognition of the termination of the life of this society by reason of the unlawfulness of the Trusts; or the result of abandonment of principles, actual liquidation, or other acts in *pais*, and which seeks a general distribution of its property among all entitled to distribution, by way of resulting trust.

In every preceding case, the plaintiff sued an *existing* society, and recognized the society as a *going* society; in every case he sued to recover either his own specific contribution of property or labor, or the specific contributions of his ancestors.

Review of the Cases.

The first case in the order of time was brought by Peter Schreiber's administrator and is reported in 5 Watts (Pa) 351. This was an action of account render for Schreiber's share of profits arising under the joint transactions of the society. The action declared for an alleged partnership, and therefore affirmed the rightfulness of the partnership, and its continuing existence.

At the time of the death of Schreiber, the principle of restoration of goods to withdrawing members was in force. Schreiber had, however, not withdrawn, but had died in the society without exercising his right of withdrawal, and had also executed a release to the society in the broadest terms of every suit, claim or demand against Rapp and his associates from the beginning of the world.

The evidence also showed that there were no creditors of the decedent's estate.

Then comes the case of Nachtrieb just referred to, reported in 19th Howard, 126. As we have already said, Nachtrieb sued to recover only his own share of the property of a Society which he recognized as an existing Society. He neither attacked the Society itself nor assailed the validity of the trusts created. His grievance was that he had been unjustly and unlawfully excluded from membership, and "deprived of all share and participation in its property and effects, its benefits and advantages by the fraud and combination of George Rapp and his associates."

The lower Court found his charges sustained by the evidence, and entered an interlocutory decree that his interest should be ascertained under the articles of 1836, as an equal owner of the joint and indivisible stock. And Justice Grier, sitting in Circuit entered the final decree sustaining Judge Irwin.

This Court, however, held that a certain receipt of Nachtrieb was in reality a release; and, therefore, barred his action.

The Supreme Court of the United States recognized the right of inquiry for equitable relief, to show that the

> "Rule of the leader, instead of being patriarchal, was "austere, oppressive or tyranical; his discipline, vexations and "cruel; his instructions fanatical, and, upon occasions, impious, "his system repugnant to public order, and the domestic hap- "piness of its members; his management of their revenues and

"estate, rapacious and selfish, or dishonest; and that the condi-
"tion of his subjects was servile, ignorant and degraded, so
"that none of them were responsible for their contracts or en-
"gagements to him, from a defect of capacity and freedom."

The Court further says:

"It was a necessary prerequisite that the bill should have
"been so framed as to exhibit such aspects of the internal ar-
"rangement and social and religious economy of the associa-
"tion. This was not done; and for this cause the evidence can-
"not be considerad."

The whole case was before this Court, and there is no expression of dissent from any conclusion of the lower Court. The structure of the bill precluded the relief. Had the pleadings shown such an issue, this Court would have considered the evidence, and if sustained, granted relief.

The case of *Spiedel vs. Henrici* is reported in 120 (U. S.) 377. The opinion of the Court was rendered by Mr. Justice GRAY.

The bill in that case sought to recover specific contributions made by Spiedel to the Society, under the articles of 1805 and 1827, under which he had the right of restoration upon withdrawal from membership. He had withdrawn from the Society before the articles of 1836, which annulled the right of restoration. It in no wise involved the question of dissolution of the Society, the consequent failure of Trust, and the rights of reversioners by way of resulting Trust. In fact it could not.

This Court holding the Trust created to be an express trust, disposed of the case as expressed in the syllabus, as follows, viz;

"A bill in equity against persons holding a fund avowedly "in trust for the common benefit of the members of a voluntary "association, living together as a community, subject to its "regulations, cannot, whether the trust is lawful or unlawful, "be maintained by one who has left the community, and for "fifty years afterwards taken no steps to claim any interest in "the fund."

It was distinctly stated in that opinion as follows, viz:

"It is proper to add that this decision does not rest in any "degree upon the judgments of the Supreme Court of Penn-"sylvania, and of this Court, in the cases cited at bar, in favor "of the Trustees of the Harmony Society in suits brought "against them by other members, because each of those cases "differed in its facts, and especially in showing that the Society "had written articles of of association, which are not disclosed "by this bill. *Schreiber vs. Rapp*, 5 Watts, 351, (S. C., 30 "Am., Dec. 327); *Baker vs. Nachtrieb*, 19 How. 126.

VII.

Counsel for petitioners, in addition to the foregoing, further respectfully represents to the Court:

That some of the Trust properties are situated in the State of Michigan, as is recited in the contracts of sale of retiring members to the Trustees, dated in 1894, heretofore referred to.

That as counsel are advised and believe, heirs and representatives of ancestors dying in the Society, who were donors of the Trust funds, and who have causes of action similar to those of the petitioners reside in the State of Ohio, Michigan, West Virginia and other States and Territories, and would not be precluded from legal procedure in other Circuits than the Third Circuit.

That the questions involved in this case will apply to numerous similar unincorporated communistic societies in the United States, among them notably the Teed Community, the Dowie Community, the Harris Community. whose principles, purposes and autocracy of government and concentration of wealth have excited widespread animadversions.

That in the several cases affecting this Society the questions involved were not considered or passed upon by reason of some bar to the plaintiff by release or by staleness of the claim; and that none of the cases presented the termination of the life of the Society, the failure of the Trusts, and the destination of the *corpus* of the Trust properties.

That, as hereinbefore set forth, these questions have not been adequately considered by the Court of Appeals; and the title of the plaintiffs as distributees is misunderstood.

It is further respectfully represented that the Trust property of the Society is in the possession of an irresponsible corporation dealing in real estate, which has it in its power to dispose of it all to third persons ignorant of any trust; that its title was acquired for a grossly inadequate and fraudulent undervaluation, and was paid for by its entire capital stock of $400,000; and that petitioners are unprotected by any interlocutory decree to preserve its *status quo*.

Counsel file with this brief, copies of their printed argument presented to the Circuit Court of Appeals, in which the authorities upon which they mainly rely are collated, should any reference to authorities be thought advisable.

Therefore, in conclusion we most earnestly and respectfully represent that if the present decree is permitted to stand, Mr. Duss, the Senior Trustee, is:

(1) Openly invited to close the door to new members and to purchase the retirement of all the seven remaining members (under deeds of liquidation similar to the ones that were signed by the members retiring since the year 1893), so that he and his wife will alone remain in possession of this great estate and answerable to no one for its use or disposition.

(2) If it were lawful for the remaining members of the Society to convey all the trust property to the Union Company, it will be lawful in the future:

(a) Either to sell certificates of stock in the Union Company for cash and depart with the proceeds;

(b) Or convert said assets to other private or capitalistic enterprises independent of their character or relation to the trusts under which said property was admittedly held.

Therefore, it finally follows, that while the Circuit Court held it was unnecessary to pass upon and determine the final disposition of the property in case of dissolution, that we, as reversioners, must stand idly by and witness the practical and effective private sequestration of the trust estate until nothing remains to revert, because this covert method of disintegration will put the entire trust estate into the hands of the present surviving members without let or hindrance. To leave this cause in such a position seems improvident, and affords the present complainants no means whatever of protecting their rights in the premises.

Reversioners, just as in the case of remaindermen, have rights that a chancellor alone can adequately protect. The present decree invites the waste or entire dissipation of the trust estate, besides imposing heavy costs on the complainants in their efforts to conserve the estate of their ancestors. As the next of kin and as reversioners under a resulting trust, the complainants occupy a position entitling them to the protection of a court of equity, instead of leaving the whole estate in the hands of one whom the evidence

shows to be wholly irresponsible, and, judged by his previous acts, intent upon the absorption of the assets of the Society by himself and his colleagues through methods so certain, if continued, that this "joint and indivisible stock" will become the private fortune of a man who never contributed a dollar or an acre of land to the Society; a result clearly and utterly at variance with the articles of association creating the trust. While it may be, that the ancestors of the plaintiffs intended (whether this could be lawfully done or not) that all inheritable rights should be suspended during the life of the society, it is equally clear that they never intended that one or more persons who later were entrusted with the control and perpetuation of the society, should be rewarded with the whole trust estate by acts of dissolution brought about by the coveteousness and treachery of would-be surviving members, acting as private liquidators.

SHIRAS & DICKEY,
S. SCHOYER, JR.,
J. J. MILLER,
S. B. SCHOYER,
Counsel for Petitioners.

Reply to Respondents' Brief.

Since the preparation of the foregoing Brief, Petitioners' counsel have been served with copies of a Brief for the Defendants in answer to the Petition for the allowance of a writ of *certiorari* in this case. In many respects the Respondents' Brief is misleading, and as the same has been served upon us only on Friday afternoon, the 25th of January, we find ourselves unable to make a more extensive correction than those we now present. The inaccuracies, we are satisfied, arise from the fact that counsel who prepared the Brief in opposition to our motion is almost entirely unfamiliar with the evidence and most of the legal questions arising in the case. He did not participate in the taking of any of the testimony before the Master, nor in any of the numerous legal arguments before the several tribunals, and he has been forced to discuss these questions owing to the absence, abroad, of the counsel who appeared in the courts below.

In the opening paragraph under the title "History of the Litigation," Respondents' counsel says in reference to the plaintiff: "They merely claim to represent, by consanguinity, the alleged rights of persons who were, at one time (*in each case very remote*), members of the Society, and who died in membership, *or withdrew from the Society many years ago.*"

The Complainants never, either in the Bill or throughout the litigation, claimed as heirs of "members who withdrew from the Society," and it is equally erroneous to state that such heirship is remote either in consanguinity or by reason of the long decease of their ancestors. Christian Schwartz, the first named plaintiff, is admittedly the only heir of his father and mother who died in the Society, and also the only heir of his seven brothers and sisters who died in full membership—some of them as recently as 1887 and 1889. No evidence was offered to show the value of the money or land contributed by the ancestors of the plaintiffs, or the value of the labor of said ancestors, upon which most of the wealth of the Society was founded, because such proof would have been incon-

sistent and in contravention of our contention that the plaintiffs' rights were based upon the fact that their ancestors were equal and joint owners under the article of 1836. The statement in Respondent's Brief that plaintiffs' ancestors never contributed a cent to the Society is therefore misleading for the above reason. Further the statement that there would probably be *twenty thousand heirs* to share in the Society's property, and that the present Complainants would be entitled to less than than $750.00 is entirely unsupported by evidence and unwarranted. Schwartz, for instance, is the only heir of nine deceased members, while the members dying in fellowship are much less than cited by counsel; though, it is likely, that there are several hundred citizens scattered throughout the United States who are affected by this litigation and whose rights will either be determined by it, or if not, they will be left to renew this litigation in various Circuits of the Federal Courts. This is the first time we have ever heard it presented as an argument against the review of a case that there are a large number of persons affected by the present litigation.

Neither in the Court of Appeals nor in this Court have the allegations respecting the moral turpitude of John S. Duss, or the financial condition of the Society which it is alleged confronted the Trustees of that Society in the years 1892, 1893, 1894, been pressed for consideration; and therefore so much of Respondent's Brief as relates thereto is improperly included therein. We cannot understand the purpose of such arguments before this Court unless in the expectation of exciting prejudice or clouding the issues, and as many of these statements are erroneous, and as made, seemingly reflect not only upon the counsel in this case but upon their clients, we feel impelled to make certain corrections of several statements, which while immaterial now, and not presented or discussed by any assignments of error reviewed by the Court of Appeals, yet as presented in the Respondents' Brief, are used to exalt the character of Mr. Duss and besmirch the character of the Complainants. On page 21 of Respondents' Brief are cited two instances of the alleged unjust character of the plaintiffs' attacks on

Mr. Duss: One alleges that Complainants averred that Mr. Duss was the friend and confederate of Dr. Cyrus Teed, a notorious libertine who presided over an institution in Chicago, filled with depraved women, and that Mr. Duss at one time tried to get Teed and some of his followers into the Society. As to these statements Respondent's counsel says: "There was not a single word of testimony to justify this charge. Not a *single* word." Considering the fact that there are *over one hundred pages* bearing directly on these charges, and that it was clearly shown that Mr. Duss was a friend of Teed, that he gave him money, entertained him as a guest, that he and Mrs. Duss visited Teed at his retreat in Chicago, that Mr. Duss sent a young female member of his household to live with Teed without her parent's knowledge, that he employed one of Teed's female followers ostensibly as a cook and had her installed in the Great House where she remained a year in close contact with the decrepid Senior Trustee Henrici, studying, as she testified, the affairs of the Society, and considering that when Mr. Duss was the acting Junior Trustee an expensive house was built on the outskirts of the town of Economy, and its erection was partly under the supervision of Teed's brother, that reputable members of the Harmony Society in this case testified that it was rumored in the Society that this house was being erected for Cyrus Teed, we cannot understand the counsel's statement that the evidence failed to show Duss' intimacy with Teed or justified the suspicions as to his intentions. These facts together with the citations of evidence appear on page 20 in the History of the Case of Appellant's Brief in the Court of Appeals.

The other instance singled out and cited as evidence of the unjust treatment of Mr. Duss, appears on pages 21 and 22 of Respondents' Brief, wherein it is stated that Complainants' charge that Mr. Duss "had been guilty of the gravest duplicity with his cousin Fredrika R. Kroll, a young girl of eighteen years of age, formerly a member of his household, in secretly taking her to Teed's residence, &c." The testimony shows that Mr. Duss did secretly, without the knowledge of the girl's mother, take her to Teed's abode in

Chicago, where she remained over a year, and that this occurred about a week after it was testified to by witness Weggel that he had caught Mr. Duss and his cousin *in flagrante delicto*. On the question as to what this latter witness testified, we again quote from page 22, Respondents' Brief:

> "The witness who offered to support this charge was a *defeated* suitor against the Harmony Society. His evidence was plainly false upon its face, and he *subsequently appeared before the Master and admitted, and stuck to his admissions under the closest cross examinations, that the entire charge which he swore to was false, and he had been guilty of the most barefaced perjury.*"

Our reply to this is, first, that it was shown at the time the witness first circulated this story that he had *not* lost his suit against the Harmony Society; secondly, the counsel for Respondents has neglected to tell the *sequel* to this witness' (Weggel's) recantation, namely, that the Complainants caused an information *for perjury* to be made against him in *thus recanting*, that he was indicted by the Grand Jury and called for trial in 1895, at the October Term of the United States District Court, where he *plead guilty to the charge of perjury*, stating that he was improperly influenced by Duss to recant, and that his original testimony was correct, and thereupon, Judge Buffington presiding, sentenced Weggel to the Penitentiary for a year and a quarter. Vide, page 937, Record, Vol. II. The testimony further shows that this young girl's mother, when called as a witness by Complainants, testified that John Scheid, a member of the Board of Elders, and a friend of Mr. Duss', informed her that he had heard that Duss had wronged her daughter, and she further testified, "He said I should let everything go and not say anything about it, that Mr. Duss was a minister, that everything would go right." Page 649, typewritten testimony taken before the Master. Whether the Master was right or wrong in clearing Mr. Duss on this point, cannot now be discussed, except to say that the testimony shows the good faith of the Complainants in this matter. The alleged history of Mr.

Duss' life in Respondents' Brief is made up partly of unproved paragraphs of the Defendants' Answer and of disputed statements of his own, and we respectfully refer again to the History of the Case in Appellants' Brief for a full review of this man's record.

The recent financial history of the Society in Respondents' Brief is in no wise warranted by the present proceeding. The Petitioners answers to these statements will be found on page 38, 39 and 40, History of the Case, *ante*. Likewise the allegation that Mr. Duss tried to prevent the members from retiring, and that he could not induce new members to enter into the Society on account of the Feucht litigation, we most respectfully refer the Court to pages 22–39, inclusive, Ibid, where the citations of evidence clearly show how unfounded and trivial Mr. Duss' explanations are, and also we refer the Court to pages 202 to 206 inclusive, Appellants' Argument

This reply is hurriedly printed for the purpose of calling attention to certain inaccuracies in Respondents' Brief and not for the purpose of touching upon subjects that are really germane to these proceedings. The importance of the questions involved render it impossible now to review Respondents' arguments thereon.

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Of Counsel for Petitioners.